

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GARDEN CITY BOXING CLUB, INC.,

Plaintiff,

-against-

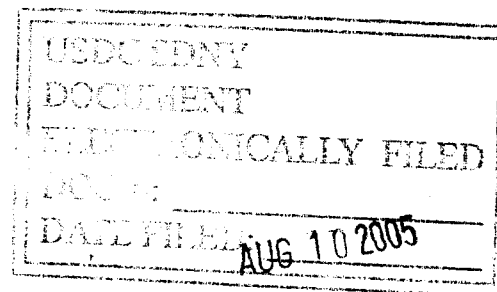
CESAR A. MARTINEZ, JR., individually d/b/a
46TH STREET RESTAURANT CORP. d/b/a VIVA
TEQUILA a/k/a VIVA TEQUILA a MEXICAN
RESTAURANT,

Defendants.
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GEORGE B. DANIELS, District Judge:

Plaintiff brought suit against defendants, a restaurant and its proprietor, seeking damages for the alleged theft of cable television services in violation of the Communications Act of 1934, 47 U.S.C. §§ 553 and 605. Specifically, plaintiff alleged that defendants intercepted a pay-per-view boxing match without paying the required fee, and displayed the program to restaurant patrons. Defendants failed to answer the complaint, and default judgment was thereby entered against them. Plaintiff now seeks statutory damages, attorney's fees, costs, and pre-judgment interest on statutory damages.

Magistrate Judge Michael H. Dolinger issued a careful and thorough Report and Recommendation ("Report") wherein he recommended that plaintiff be awarded \$27,000.00 in statutory damages, \$2,875.00 in attorney's fees, and \$565.00 in costs. He also recommended that pre-judgment interest be denied for plaintiff's failure to show it "suffered a measurable financial injury at an earlier time." Report at 15; see City of Milwaukee v. Cement Div., Nat'l Gypsum Co., 515 U.S. 189, 196 (1995); ITT World Communications, Inc. v. Western Union Telegraph Co., 598 F.Supp. 1435, 1437. In his Report, Magistrate Judge Dolinger advised the parties that



ORDER

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failure to file timely objections to the Report would constitute a waiver of those objections and would preclude appellate review. Neither party filed objections to the Report, and the time to do so has expired. 28 U.S.C. § 636(b)(1); Fed.R.Civ.P. 72(b).

The Court may accept, reject, or modify in whole or part the findings and recommendations set forth within the Report. Fed.R.Civ.P. 72(b); 28 U.S.C. § 636(b)(1)(C).

Where there are no objections, the Court may accept the Report provided there is no clear error on the face of the record. See Nelson v. Smith, 618 F.Supp 1186, 1189 (S.D.N.Y. 1985); see also Heisler v. Kralik, 981 F.Supp. 830, 840 (S.D.N.Y. 1997), aff'd 164 F.3d 618 (2d Cir. 1998).

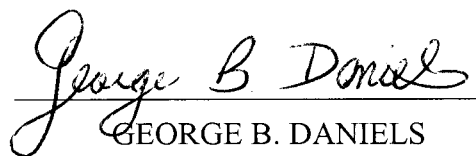
After reviewing the Report, the Court finds that the record is not facially erroneous and is in conformity with the law in all respects.

Accordingly, the Court adopts the Report in its entirety. For the reasons stated therein, the Clerk of the Court is respectfully requested to enter judgment against defendants in the amount of \$30,440.00 and to close the case.

Dated: August 10, 2005

New York, New York

SO ORDERED:


GEORGE B. DANIELS
United States District Judge